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BY ECF

Honorable Katharine H. Parker
United States Magistrate Judge
Southern District of New York
500 Pearl Street, Suite 1950
New York, New York 10007

**Re: *City of Almaty, Kazakhstan, et ano. v. Mukhtar Ablyazov, et al.*,
Case No. 15 Civ. 5345 (AJN) (KHP)**

Dear Judge Parker:

We represent the City of Almaty, Kazakhstan and BTA Bank (“the Kazakh Entities”), and write pursuant to the Court’s Orders of April 20, 2018 [ECF No. 621] and May 4, 2018 [ECF No. 631] to provide an update regarding discussions between the Kazakh Entities and Ilyas and Viktor Khrapunov about the so-called Kazaword documents, and to respectfully request an order compelling the Khrapunovs to produce certain evidence.

As the Court is aware, on April 18, 2018, the Kazakh Entities moved to compel the Khrapunovs to disclose how they obtained 19 stolen documents produced by the Khrapunovs and identified in the Kazakh Entities’ motion (the “Stolen Documents”). [ECF Nos. 616; 616-01]. In earlier motion practice the Khrapunovs had attributed the Stolen Documents to a series of downloads from the “Kazaword” website made by a Swiss Bailiff working for Ilyas Khrapunov (the “Kazaword Archives”). After the Khrapunovs produced the Kazaword Archives, however, the Stolen Documents were not among them. In response, the Khrapunovs acknowledged that they had failed to produce the entire Kazaword Archives as ordered by Your Honor, and produced a second tranche of documents purportedly containing the remainder of the Kazaword Archives. [ECF No. 618]. The Court then denied the Kazakh Entities’ motion without prejudice, and ordered the parties to meet and confer and return to the Court. [ECF No. 621].

In accordance with the Court’s Order, the parties met and conferred multiple times on this issue. In these discussions, the Khrapunovs disclosed that a number of the Stolen Documents were either (1) downloaded by Ilyas Khrapunov’s Swiss counsel, (2) purportedly downloaded by Khrapunov himself [ECF No. 618, at 2-3], or (3) *were not downloaded from Kazaword at all*, but rather, “provided to the Khrapunovs, directly, by Rakhat Aliyev” or “provided to Ilyas Khrapunov directly by Olesya Pavlenko.” *See* Ex. 1.

The Khrapunovs have now disclosed some of their purported sources for the Stolen Documents. The Khrapunovs’ disclosure that some of the Stolen Documents were not obtained from Kazaword at all, however, raises a separate and significant question about their conduct in discovery. If the Khrapunovs have responsive documents purportedly from Rakhat Aliyev, Olesya Pavlenko, or Kazaword documents obtained directly by Ilyas Khrapunov or his Swiss counsel, they should be compelled to produce all of those documents in discovery.

The Khrapunovs’ story about the Stolen Documents has now shifted at least half a dozen times since they first produced these documents on the eve of their deposition of BTA Bank’s

Rule 30(b)(6) witness. Specifically, the Khrapunovs first indicated that the Stolen Documents came directly from Kazaword [ECF No. 356, at 2; ECF No. 356, at ¶ 3], then claimed that they came from an unidentified third-party [ECF No. 356, at ¶ 5], then claimed that they all came from the Kazaword Archives collected by a Swiss Bailiff [ECF No. 358], then claimed that some came from a collection by Ilyas Khrapunov himself [ECF No. 618, at 2-3], then claimed that some came from his Swiss lawyers (Ex. 1, at 1), and finally claimed that some came from two never-before disclosed non-parties, Rakhat Aliyev and Olesya Pavlenko. Ex. 1, at 2.

As this motion sequence has demonstrated, the Kazakh Entities have been forced to pry information from the Khrapunovs bit by bit, knocking down false explanations at each step. To be clear, the Kazakh Entities do not suggest any misconduct by opposing counsel, who have worked in good faith throughout this meet-and-confer process. Rather, it has become painfully clear throughout this action that the Khrapunovs themselves are misleading or feeding false information to their counsel in order to frustrate discovery here.¹ Nothing less than direct orders from this Court appear to motivate them to fulfill their discovery obligations. The Kazakh Entities therefore respectfully request an order compelling the Khrapunovs to produce all documents received from Rakhat Aliyev and/or Olesya Pavlenko, as well as all documents downloaded by Ilyas Khrapunov or Swiss counsel purportedly from Kazaword.

Thank you for your consideration of this request.

Respectfully,

/s/ Matthew L. Schwartz
Matthew L. Schwartz

¹ This is another illustration why the Khrapunovs' counsel should not be permitted to withdraw.
